

1982 WL 204141 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 16, 1982

**In re: Archie G. Craft**

\*1 Mr. Curtis H. Straub, II  
PSOB Hearing Officer  
Law Enforcement Assistance Administration  
U. S. Department of Justice  
Washington, DC 20531

Dear Mr. Straub:

On July 4, 1978, Archie G. Craft, a Correction Officer employed by the South Carolina Department of Corrections, was shot and killed in a motel parking lot. He was not on duty as a Corrections Officer at the time. Application has been made by his family for benefits under the Federal Public Safety Officers' Benefits Act. See, [42 U.S.C.S. §§ 3796 et seq.](#) That act authorizes the Law Enforcement Assistance Administration to pay a \$50,000 benefit to designated beneficiaries of "a public safety officer" who has died as the direct and proximate result of a personal injury sustained in the line of duty. [42 U.S.C.S § 2796\(a\)](#). A "corrections officer" is a "public safety officer" as defined by that Act. See, [42 U.S.C.S. § 3796b\(5\) and \(7\)](#).

You have requested our view as to the extent of the late officer's law enforcement authority because the constable's commission held by him recited that, while he was "to enforce the Laws of the State," his "authority [was] restricted to duties within the S. C. Dept. of Corrections [sic]." <sup>a1</sup> See, Commission March 2, 1979 (attached). Craft was appointed a State constable pursuant to [Section 23-1-60 of the South Carolina Code of Laws \(1976\)](#) by Governor Richard W. Riley on March 2, 1979. Id.; see also, Letter from Elliott D. Thompson to John T. Campbell, March 2, 1979 (attached).

The last cited statute provides in part as follows:

The Governor may ... appoint ... constables ... to assist in the detection of crime and the enforcement of any criminal laws of this State .... Appointments by the Governor may be made hereunder without compensation from the State. ...

Nowhere does [Section 23-1-60](#), a copy of which is attached hereto, empower the Governor to restrict the law enforcement authority or arrest powers of a State constable. The only restriction which the Governor is authorized by that statute to make relates to the officer's compensation.

Our research does not reveal any case in which the precise issue raised by you was discussed by the South Carolina Supreme Court; however, in [State v. Luster](#), [178 S.C. 199, 182 S.E. 427 \(1935\)](#), one of the questions there involved concerned the authority of a State highway patrolman to arrest a person off the highway who had committed a misdemeanor in his presence. Our Supreme Court held that a patrolman, or a State constable, was vested with all powers of a state peace officer and that such an officer was not limited in the making of arrests.

As we interpret [Luster](#), once the Governor appoints a person to be a State constable that person possesses complete arrest authority anywhere within the State of South Carolina. Cf., Letter from Charles H. Richardson to Donald N. Chadwick, May 14, 1980 (attached). And because the statute which authorizes the Governor to appoint State constables does not permit him to restrict such an officer's arrest powers, any attempt by the Governor to do so is without lawful authority and has no effect upon the officer's power to arrest.

\*2 We are mindful, of course, that the decedent's commission recited a limitation; but a commission is not the source of the officer's authority. It simply serves as written evidence of his appointment. See, 63 Am. Jur. 2d Public Officers and Employees § 114 at 699 (19). The officer's powers are to be found in the statute that created his office [Id. § 265 at 784], in this instance [Section 23-1-60](#). At most, the commission's designation of the area where the decedent was to exercise his law enforcement powers constituted a mere expectancy as to the location in which he was to enforce the criminal laws of this State; it did not limit his powers of arrest, in our opinion.

We regret that we have taken such a long time to respond to your inquiry and hope that the foregoing will assist you in deciding the question before you.

Best wishes,

C. Tolbert Goolsby, Jr.  
Deputy Attorney General

#### Footnotes

[a1](#) Credentials issued by the State Law Enforcement Division ("SLED") and possessed by the deceased at the time of his death stated, on the other hand, that he was an "Agent and Member of the Law Enforcement Division of South Carolina, and [was] authorized to enforce the Laws of South Carolina." The SLED credentials made no attempt to limit his authority to any designated location. See, SLED Credentials (undated) (attached). Prior to March 2, 1979, when the decedent was commissioned by Governor Richard W. Riley, his commission contained no express restriction as to his authority; indeed, he was recognized as possessing "state-wide authority." See, Letter from Nettie H. Bryan to O. Frank Thorton, September 27, 1979 (attached).

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